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restrictions placed upon the Federal regulation by the court in *Kentucky Resources Council v. Norton*, 2002 U.S. App. Lexis 11365, Slip. Op. at 5. (D.C. Cir. May 30, 2002) The “Reclamation Agreements” provision at the end of Chapter 12 only applies to AML reclamation projects authorized through the Federal AML grant process. Copies may be obtained at the address listed in (a)(2) of this section for OSM or the Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, Division of Abandoned Mine Lands, 2521 Old Lawrenceburg Road, Frankfort, Kentucky 40601.

(e) The Kentucky AMLR Plan amendment submitted on April 23, 2007, and consisting of revisions to KRS Chapter 350 that correspond to changes to the Federal Surface Mining Control and Reclamation Act of 1977 resulting from the Relief and Health Care Act of 2006, is approved.

[62 FR 9943, Mar. 5, 1997, as amended at 68 FR 65843, Nov. 24, 2003; 72 FR 59479, Oct. 22, 2007]

§ 917.30 State-Federal cooperative agreement.

COOPERATIVE AGREEMENT

The Governor of the Commonwealth of Kentucky (the Governor) and the Secretary of the Department of the Interior (the Secretary) enter into a Cooperative Agreement (Agreement) to read as follows:

ARTICLE I: INTRODUCTION, PURPOSE, AND RESPONSIBLE AGENCIES

A. Authority

This Agreement is authorized by Section 523(c) of the Surface Mining Control and Reclamation Act (Act), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved by the Secretary under 30 U.S.C. 1253, to elect to enter into an Agreement for the regulation and control of coal exploration operations not subject to 43 CFR Group 3400 and surface coal mining and reclamation operations on Federal lands. This Agreement provides for State regulation consistent with the Act, the Federal lands program (30 CFR Chapter VII, Subchapter D) and the approved Kentucky State Program (Program) for surface coal mining and reclamation operations on Federal lands.

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B. Purposes

The purposes of this Agreement are to (a) foster Federal-State cooperation on the regulation of surface coal mining and reclamation operations and coal exploration operations not subject to 43 CFR Group 3400, (b) minimize intergovernmental duplication of effort, and (c) provide for uniform and effective application of the Program on all lands in Kentucky in accordance with the Act and the Program.

C. Responsible Administrative Agencies

The Kentucky Natural Resources and Environmental Protection Cabinet (NREPC), acting through the Department for Surface Mining Reclamation and Enforcement (DSMRE), shall be responsible for administering this Agreement on behalf of the Governor. The Office of Surface Mining Reclamation and Enforcement (OSM) shall administer this Agreement on behalf of the Secretary.

ARTICLE II: EFFECTIVE DATE

After being signed by the Secretary and the Governor, this Agreement shall be effective on October 1, 1998. This Agreement shall remain in effect until terminated as provided for in Article XI.

ARTICLE III: DEFINITIONS

The terms and phrases used in this Agreement, which are defined in the Act, 30 CFR Parts 700, 701 and 740 and defined in the KRS 350 and the rules and regulations promulgated pursuant to that Act, shall have the same meanings as set forth in said definitions. Where there is a conflict between the above referenced State and Federal definitions, the definitions used in the approved State Program will apply except in the case of a term which defines the Secretary’s continuing responsibilities under the Act or other laws.

ARTICLE IV: APPLICABILITY

In accordance with the Federal lands program, the laws, regulations, terms and provisions of the Program are applicable to Federal lands in Kentucky except as otherwise stated in this Agreement, The Act, 30 CFR 740.4 and 745.13 or other applicable Federal laws, Executive Orders or regulations.

Orders and decisions issued by the NREPC in accordance with the Program that are appealable shall be appealed to the reviewing authority in accordance with the Program. Orders and decisions issued by the Secretary or his authorized agents that are appealable shall be appealed to the Department of the Interior’s Office of Hearings and Appeals.

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ARTICLE V: GENERAL REQUIREMENTS

The Governor and the Secretary affirm that they will comply with all provisions of this Agreement.

A. Authority of State Agency

NREPC has and shall continue to have the authority under State law to carry out this agreement.

B. Funding

Upon application by NREPC, and subject to appropriations, OSM will provide the State with funds to defray the costs associated with carrying out its responsibilities under this Agreement as provided in Section 705(c) of the Act and 30 CFR part 735. Such funds will cover the full cost incurred by NREPC in carrying out those responsibilities. The amount of the grant will be determined using the procedures specified in the Federal Assistance Manual Chapter 3-10 and appendix III.

For purposes of this agreement, actual costs of NREPC's administration of its approved program on Federal lands in accordance with this agreement shall be that percentage of NREPC's total program expenditures during any specific grant period that equals the percentage of Federal lands within all lands under permit in the State of Kentucky for that specific grant period.

If NREPC applies for a grant but sufficient funds have not been appropriated to OSM, OSM and NREPC will meet to decide upon appropriate measures that will insure that mining operations on Federal lands located in Kentucky are regulated in accordance with the approved Program. The NREPC also reserves the right to terminate this agreement should OSM be unable to adequately fund this program.

C. Reports and Records

NREPC will make annual reports to OSM containing information with respect to compliance with terms of this Agreement pursuant to 30 CFR 745.12(d).

Upon request, NREPC and OSM will exchange information generated under this Agreement, except where prohibited by Federal or State law.

OSM will provide NREPC with a copy of any final evaluation reports prepared concerning State administration and enforcement of this Agreement. NREPC comments on the report will be attached before being sent to the Congress or other interested parties.

D. Personnel

NREPC shall have the personnel necessary to fully implement this Agreement in accordance with the provision of the Act, ap-

plicable regulations, the Federal lands program and the approved Program.

E. Equipment and Facilities

NREPC will assure itself access to equipment, laboratories and facilities to perform all inspections, investigations, studies, tests and analyses that are necessary to carry out the requirements of this Agreement.

F. Permit Application Fees and Civil Penalties

The amount of the fee accompanying an application for a permit for operations on Federal lands in Kentucky shall be determined in accordance with KRS 350.060 and Federal law. All permit fees and civil penalties collected from operations on Federal lands will be retained by the State. Permit fees shall be considered Program income. Civil penalties shall not be considered Program income. The financial status report submitted to OSM pursuant to 30 CFR 735.26 shall include the amount of fees and civil penalties collected and attributable to Federal lands during the prior State fiscal year.

ARTICLE VI: REVIEW OF PERMIT APPLICATION PACKAGE

A. Responsibilities

NREPC will assume primary responsibility for the analysis, review, and approval, disapproval, or conditional approval of the permit application component of the permit application package (PAP) required by 30 CFR 740.13 for surface coal mining and reclamation operations in Kentucky on Federal lands. NREPC will assume the responsibilities for review of permit applications to the extent authorized in 30 CFR 740.4(c)(1), (2), (3), (4), (6), and (7).

For proposals to conduct surface coal mining operations involving leased Federal coal, OSM is responsible for preparing a mining plan decision document in accordance with 30 CFR 746.13 and obtaining the Secretary's approval.

The Bureau of Land Management (BLM) is responsible for matters concerned exclusively with regulations under 43 CFR Group 3400.

The Secretary reserves the right to act independently of NREPC to carry out responsibilities under laws other than the Act or provisions of the Act not covered by the Program, and in instances of disagreement over the Act and the Federal lands program. The Secretary will make determinations under the Act that cannot be delegated to the State, some of which have been delegated to OSM.

Responsibilities and decisions which can be delegated to NREPC under other applicable Federal laws may be specified in working agreements between OSM and the State with

the concurrence of any Federal agency involved and without amendment to this agreement.

B. Permit Application Package

NREPC shall require an applicant proposing to conduct surface coal mining and reclamation operations on Federal lands to submit a PAP with an appropriate number of copies to NREPC. NREPC will furnish OSM, the Federal land management agency, and any other agency with jurisdiction or responsibility over Federal lands affected by operations proposed in the PAP with an appropriate number of copies of the PAP. The PAP will be in the form required by NREPC and will include any supplemental information required by OSM, the Federal land management agency, and any other agency with jurisdiction or responsibility over Federal lands affected by operations proposed in the PAP.

At a minimum, the PAP will satisfy the requirements of 30 CFR 740.13(b) and include the information necessary for NREPC to make a determination of compliance with the Program, and for OSM, the appropriate Federal land management agencies, and any other agencies with jurisdiction or responsibilities over Federal lands affected by operations proposed in the PAP to make determinations of compliance with applicable requirements of the Act, the Federal lands program, other Federal laws, Executive Orders, and regulations for which they are responsible.

C. Review Procedures

NREPC will be the primary point of contact for applicants regarding the review of the PAP for compliance with the Program and State laws and regulations. OSM will review the applicable portions of the PAP for compliance with the non-delegated responsibilities of the Act and for compliance with the requirements of other Federal laws, Executive Orders, and regulations.

OSM and NREPC will develop a work plan and schedule for PAP reviews that comply with the time limitations established by the approved State program, and each agency will designate a person as the Federal lands liaison. The Federal lands liaisons will serve as the primary points of contact between OSM and NREPC throughout the review process. Not later than 45 calendar days after receipt of an administratively complete PAP, unless a different schedule is agreed upon, OSM will furnish NREPC with its review comments on the PAP and specify any requirements for additional data.

OSM and NREPC will coordinate with each other during the review process as needed. NREPC will send to OSM copies of any correspondence with the applicant and any in-

formation received from the applicant regarding the PAP.

OSM will send to NREPC copies of all OSM correspondence which may have a bearing on the PAP.

OSM will provide technical assistance to NREPC when requested, and will have access to NREPC files concerning operations on Federal lands. NREPC will keep OSM informed of findings made during the review process which bear on the responsibilities of OSM or other Federal agencies.

D. Coordination Between NREPC, OSM, and Other Federal Agencies

NREPC will, to the extent authorized, consult with the Federal land management agency and BLM pursuant to 30 CFR 740.4(c)(2) and (3), respectively. NREPC will also be responsible for obtaining the comments and determinations of other agencies with jurisdiction or responsibility over the Federal lands affected by the operations proposed in the PAP. NREPC will request all Federal agencies to furnish their findings or any request for additional information to NREPC within 45 calendar days of the date of receipt of the PAP. OSM will, upon request, assist NREPC in obtaining such information.

In accordance with 30 CFR 745.12(g)(2), where lands containing leased Federal coal are involved, NREPC will provide OSM, in the form specified by OSM in consultation with NREPC, with written findings indicating that each permit application is in compliance with the terms of the regulatory program and a technical analysis of each permit application to assist OSM in meeting its responsibilities under other applicable Federal laws and regulations.

Where leased Federal coal is involved, OSM will consult with and obtain the concurrences of BLM, the Federal land management agency, and any other agency with jurisdiction or responsibility over the Federal lands affected by the operations proposed in the PAP as required to make its recommendation for the Secretary's decision on the mining plan.

Where BLM contacts the applicant in carrying out its responsibilities under 43 CFR Group 3400, BLM will immediately inform NREPC of its actions and provide NREPC with a copy of documentation of all decisions within 5 calendar days.

E. Permit Application Decision and Permit Issuance

NREPC will prepare a State decision package, including written findings and supporting documentation, indicating whether the PAP is in compliance with the Program. NREPC will make the decision on approval, disapproval, or conditional approval of the permit on Federal lands.

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Any permit issued by NREPC will incorporate any lawful terms or conditions imposed by the Federal land management agency, including conditions relating to post-mining land use, and will be conditioned upon compliance with the requirements of the Federal land management agency.

NREPC may make a decision on approval, disapproval, or conditional approval of the permit on Federal lands in accordance with the Program prior to the necessary Secretarial decision on the mining plan when leased Federal coal is involved, provided that NREPC advises the operator in the permit that Secretarial approval of the mining plan must be obtained before the operator may conduct surface coal mining operations on the Federal lease. NREPC will reserve the right to amend or rescind any requirements of the permit to conform with any terms or conditions imposed by the Secretary in the approval of the mining plan.

After making its decision on the PAP, NREPC will send a notice to the applicant, OSM, the Federal land management agencies, and any other agency with jurisdiction or responsibility over Federal lands affected by the operations proposed in the PAP. A copy of the permit and written findings will be provided to OSM upon request.

F. Review Procedures for Permit Revisions; Renewals; and Transfer, Assignment, or Sale of Permit Rights

Any permit revision or renewal for a surface coal mining and reclamation operation on Federal lands will be reviewed and approved, or disapproved, by NREPC after consultation with OSM on whether such revision or renewal constitutes a mining plan modification pursuant to 30 CFR 746.18. OSM will inform NREPC within 10 calendar days of receiving a copy of a proposed permit revision or renewal, whether the permit revision or renewal constitutes a mining plan modification.

Transfer, assignment, or sale of permit rights on Federal lands shall be processed in accordance with the Program and 30 CFR 740.13(e).

ARTICLE VII: INSPECTIONS

NREPC will conduct inspections of all surface coal mining and reclamation operations on Federal lands, in accordance with 30 CFR 740.4(c)(5) and the Program and prepare and file inspection reports in accordance with the Program. NREPC, subsequent to conducting any inspection pursuant to 30 CFR 740.4(c)(5), and in a timely fashion which will not exceed 45 calendar days, will file with OSM's Lexington Field Office a legible copy of the completed State inspection report.

NREPC will be the point of contact and primary inspection authority in dealing with the operator concerning operations and com-

pliance with the requirements covered by this Agreement, except as described herein-after. Nothing in this Agreement will prevent inspections by authorized Federal or State land management agencies for purposes other than those covered by this Agreement. The Department of the Interior acting through OSM, the Federal land management agency or any other agency with jurisdiction or responsibility over Federal lands to be affected under the proposed PAP, may conduct any inspections necessary to comply with obligations under 30 CFR Parts 842 and 843 and any laws other than the Act.

OSM will give NREPC reasonable notice of its intent to conduct an inspection under 30 CFR 842.11 in order to provide NREPC inspectors with an opportunity to accompany OSM inspectors. When OSM is responding to a citizen complaint of an imminent danger to the public health and safety, or of significant, imminent environmental harm to land, air or water resources pursuant to 30 CFR 842.11(b)(1)(ii)(c), it will contact NREPC and provide the opportunity for a joint Federal/State inspection. Inability of NREPC to make an immediate joint inspection will not be cause for OSM to delay a Federal inspection where a citizen has alleged, and OSM has reason to believe, that an imminent danger to the public health and safety, or significant, imminent environmental harm to land, air or water resources exists. All citizen complaints which do not involve an imminent danger or significant, imminent environmental harm will be referred to NREPC for action in accordance with OSM regulations, policies, and procedures.

ARTICLE VIII: ENFORCEMENT

NREPC will have primary enforcement authority under the Act concerning compliance with the requirements of this Agreement and the Program in accordance with 30 CFR 740.4(c)(5). Enforcement authority given to the Secretary under other Federal laws and Executive Orders including, but not limited to, those listed in appendix A (attached) is reserved to the Secretary.

During any joint inspections by OSM and NREPC, NREPC will have primary responsibility for enforcement procedures including issuance of orders of cessation, notices of violation, and assessment of penalties. NREPC will inform OSM prior to issuance of any decision to suspend or revoke a permit on Federal lands.

During any inspection made solely by OSM or any joint inspection where NREPC and OSM fail to agree regarding the propriety of any particular enforcement action, OSM may take any enforcement action necessary to comply with 30 CFR Parts 843, 845, and 846. Such enforcement action will be based on the standards in the Program, the Act, or both, and will be taken using the procedures and

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penalty system contained in 30 CFR Parts 843, 845, and 846.

NREPC and OSM will within 5 calendar days notify each other of all violations of applicable laws, regulations, orders, or approved mining permits subject to this Agreement, and of all actions taken with respect to such violations.

Personnel of NREPC and OSM will be mutually available to serve as witnesses in enforcement actions taken by either party.

This Agreement does not affect or limit the Secretary's authority to enforce violations of Federal laws other than the Act.

ARTICLE IX: BONDS

NREPC and the Secretary will require each permittee who conducts operations on Federal lands to submit a performance bond payable to the State of Kentucky for an amount adequate to cover the operator's responsibilities under the Act and Program. Such performance bond will be conditioned upon compliance with all requirements of the Act, the Program, State rules and regulations, and any other requirements imposed by the Department of the Interior. Such bond will state on its face that in the event the Federal Lands Cooperative Agreement between Kentucky and the U.S. Department of the Interior is terminated, the portion of the bond covering the Federal lands increment(s) shall be assigned to the United States. The bond shall also state that if subsequent to the forfeiture of the bond, the Cooperative Agreement is terminated, any unspent or uncommitted proceeds of the portion of the bond covering the Federal lands increment(s) shall be assigned to and forwarded to the United States. NREPC will advise OSM within 30 calendar days of any adjustments to the performance bond made pursuant to the Program.

Prior to releasing the permittee from any obligation under such bond for surface coal mining operations involving leased Federal coal, NREPC will obtain the concurrence of OSM. OSM concurrence will include coordination with the Federal land management agency and any other agency with jurisdiction or responsibility over Federal lands affected by the surface coal mining and reclamation operation.

Submission of a performance bond does not satisfy the requirements for a Federal lease bond required by 43 CFR subpart 3474 or lessee protection bond required in addition to a performance bond, in certain circumstances, by Section 715 of the Act. Where Federal lease bonds or protections are required, OSM or the appropriate Federal agency is responsible for the collection and maintenance of such bonds.

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ARTICLE X: DESIGNATING AREAS UNSUITABLE FOR ALL OR CERTAIN TYPES OF SURFACE COAL MINING AND RECLAMATION OPERATIONS AND ACTIVITIES, VALID EXISTING RIGHTS (VER), AND COMPATIBILITY DETERMINATIONS

A. Unsuitability Petitions

1. Authority to designate Federal lands as unsuitable for mining pursuant to a petition is reserved to the Secretary.

2. When either NREPC or OSM receives a petition to designate land areas unsuitable for all or certain types of surface coal mining operations that could impact adjacent Federal or non-Federal lands pursuant to Section 522(c) of the Act, the agency receiving the petition will notify the other agency of receipt within 5 calendar days and of the anticipated schedule for reaching a decision, and request and fully consider data, information and recommendations of the other agency. OSM will coordinate with the Federal land management agency and any other agency with jurisdiction or responsibility over Federal lands within or adjacent to the petition area and will solicit comments from these agencies.

B. VER and Compatibility Determinations

The following actions will be taken when requests for determinations of VER pursuant to Section 522(e)(1) or (2) of the Act or for determinations of compatibility pursuant to Section 522(e)(2) of the Act are received:

1. For Federal lands where proposed operations are prohibited or limited by Section 522(e)(1) or (2) of the Act and 30 CFR 761.11(a) or (b), OSM will make the VER determination.

2. OSM will process requests for determinations of compatibility under Section 522(e)(2) of the Act and 30 CFR 761.11(b) and 761.12(c).

ARTICLE XI: TERMINATION OF COOPERATIVE AGREEMENT

This Agreement may be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15.

ARTICLE XII: REINSTATEMENT OF COOPERATIVE AGREEMENT

If this Agreement has been terminated in whole or in part, it may be reinstated under the provisions of 30 CFR 745.16. The Secretary reserves the powers and authority specified in 30 CFR 745.13.

ARTICLE XIII: AMENDMENT OF COOPERATIVE AGREEMENT

This Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

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ARTICLE XIV: CHANGES IN STATE OR FEDERAL STANDARDS

The Secretary or NREPC may, from time to time, promulgate new or revised performance or reclamation requirements or enforcement and administrative procedures. Each party will, if it determines it to be necessary to keep this Agreement in force, change or revise its regulations or request necessary legislative action.

Such changes will be made under the procedures of 30 CFR part 732 for changes to the Program and under the procedures of Section 501 of the Act for changes to the Federal lands program.

NREPC and OSM will provide each other with copies of any changes to their respective laws, rules, regulations, policy statements, guidelines or standards pertaining to the enforcement and administration of this Agreement.

ARTICLE XV: CHANGES IN PERSONNEL AND ORGANIZATION

Each party to this Agreement will notify the other, when necessary, of any changes in personnel, organization and funding, or other changes that may affect the implementation of this Agreement to ensure coordination of responsibilities and facilitate cooperation.

ARTICLE XVI: RESERVATION OF RIGHTS

This Agreement will not be construed as waiving or preventing the assertion of any rights in this Agreement that the State or the Secretary may have under laws other than the Act or their regulations, including but not limited to those listed in Appendix A.

Dated: August 18, 1998.

Paul E. Patton,
Commonwealth of Kentucky.

Dated: September 24, 1998.

Bruce Babbitt,
Secretary of the Interior.

APPENDIX A

1. The Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*, and implementing regulations.

2. The Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, and implementing regulations, including 43 CFR part 3480.

3. The National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and implementing regulations, including 40 CFR part 1500.

4. The Endangered Species Act, 16 U.S.C. 1531 *et seq.*, and implementing regulations, including 50 CFR part 402.

5. The Fish and Wildlife Coordination Act, as amended, 16 U.S.C. 661 *et seq.*, 48 Stat. 401.

6. The Bald and Golden Eagle Protection Act of 1940, as amended, 16 U.S.C. 668-668d, and implementing regulations.

7. The Migratory Bird Treaty Act, as amended, 16 U.S.C. 701-718h *et seq.*

8. The National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, and implementing regulations, including 36 CFR part 800.

9. The Clean Air Act, 42 U.S.C. 7401 *et seq.*, and implementing regulations.

10. The Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, and implementing regulations.

11. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, and implementing regulations.

12. The Reservoir Salvage Act of 1960, amended by the Preservation of Historical and Archaeological Data Act of 1974, 16 U.S.C. 469 *et seq.*

13. Executive Order 11593 (May 13, 1971), Cultural Resource Inventories on Federal Lands.

14. Executive Order 11988 (May 24, 1977), for flood plain protection.

15. Executive Order 11990 (May 24, 1977), for wetlands protection.

16. The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 *et seq.*, and implementing regulations.

17. The Stock Raising Homestead Act of 1916, 43 U.S.C. 291 *et seq.*

18. The Archaeological Resources Protection Act of 1979, 16 U.S.C. 470aa *et seq.*, as amended.

19. The Constitution of the United States.

20. The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*

21. 30 CFR Chapter VII.

22. The Constitution of the Commonwealth of Kentucky and State Law.

[63 FR 53257, Oct. 2, 1998]

PART 918—LOUISIANA

Sec.

918.1 Scope.

918.10 State regulatory program approval.

918.15 Approval of Louisiana regulatory program amendments.

918.16 Required program amendments.

918.20 Approval of Louisiana abandoned mine land reclamation plan.

918.25 Approval of Louisiana abandoned mine land reclamation plan amendments.

AUTHORITY: 30 U.S.C. 1201 *et seq.*

§918.1 Scope.

This part contains all rules applicable only within Louisiana which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

[45 FR 67343, Oct. 10, 1980]